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HELENA, MONTANA

BEFORE THE STATE AUDITOR;
EX-OFFICIO COMMISSIONER OF SECURITIES AND INSURANCE
HELENA, MONTANA

IN THE MATTER OF:)	CASE NO. 9-20-02-103-I, and
)	2002-303-SEC
MARK PAYTON,)	
)	CONSENT AGREEMENT
)	
Respondent.)	

The Montana Commissioner of Securities and Insurance pursuant to the authority of the Securities Act of Montana, §30-10-101, et seq., MCA (2003) and the Montana Insurance Code, §33-1-101, et seq., MCA (2003), hereby alleges the following:

ALLEGATIONS

1. Mark Payton (hereafter "Payton") is a licensed insurance producer, license number 58529, issued by the Department. Payton is appointed with American Investors Life Insurance, Inc. (AMERUS) as an insurance producer and is paid a commission on AMERUS products that he sells.
2. Payton is not registered as an investment advisor in Montana, as required by §30-10-201 (3), MCA.
3. Payton is not registered as a securities sales person in Montana, as required by §30-10-201 (1), MCA.

4. On or about February 13, 2002, staff of the Department received a complaint from Elizabeth Husted (Husted) alleging that she received a telephone call on behalf of Payton in which the caller asserted Payton was affiliated with either the American Association of Retired Persons (AARP) or the Missoula Aging Center. Husted complained that, based on these assertions, she gave personal financial information to the caller over the phone and agreed to meet with Payton to discuss her investments. Husted further complained that, after agreeing to meet with Payton, she contacted the Missoula Aging Center and was advised that Payton had no affiliation with that organization.

5. The Department conducted an investigation of Husted's complaint. The Department, through its investigation of Husted's complaint determined that Payton acted as an unregistered investment advisor to Husted by engaging in the business of advising Husted about the value of certain securities she owned and advising her to sell those securities for compensation provided to him through his sales of AMERUS' insurance product.

6. The Department conducted an investigation of Husted's complaint. The Department, through its investigation of Husted's complaint determined that Payton acted as an unregistered securities sales person to Husted by attempting to effect the sale of some of the securities owned by Husted.

7. The Department continued its investigation of Payton and has determined that on several occasions, Payton acted as both an unregistered investment advisor and an unregistered securities sales representative to individual Montana citizens. Payton acted as an unregistered investment advisor by engaging in the business of advising these Montana citizens regarding the value of certain securities they owned and advising these individuals to sell those securities for compensation provided to Payton through his sales of AMERUS' insurance product. Further,

Payton acted as an unregistered securities sales person by effecting or attempting to effect the sale of certain securities owned by these individuals.

8. The Department's investigation of Payton has determined that Payton, while acting as either an investment advisor or a securities sales person, acted fraudulently when he persuaded persons to sell certain of their securities without reason to believe the sales were suitable for the persons

9 Through its investigation, the Department determined that Payton failed to explain and clarify to applicants for the AMERUS insurance product that the 6% interest rate he quoted was only guaranteed for the first year after the purchase of the product, in violation of ARM 6.6.805 (1) and § 33-17-1001 (1) (c), MCA.

10. Through its investigation, the Department determined that Payton failed to provide a Buyer's Guide or other disclosure documentation to applicants for the AMERUS insurance product, in violation of ARM 6.6.805 (1) and § 33-17-1001 (1) (c), MCA.

11. Through its investigation, the Department determined that Payton fraudulently attempted to sell an insurance product to Montana citizens, acting with reckless disregard as to whether his assertions regarding the product were true and the citizens' reliance on those assertions were to their detriment.

12. The Department's investigation of Payton has determined that in the conduct of his ~~affa~~ffairs under his insurance producer's license Payton used coercive and dishonest practices by using undue pressure in his sales tactics to convince persons to buy the annuity product he sells by appointment with AMERUS

13. The Department's investigation of Payton has determined that in the conduct of his affairs under his insurance producer's license, Payton is untrustworthy because he provides

investment advice without registration as an investment advisor as required by § 30-10-201, MCA.

14. The Department's investigation of Payton has determined that in the conduct of his affairs under his insurance producer's license, Payton is untrustworthy because he effects or attempts to effect sales of securities without registration as a securities sales person as required by § 30-10-201, MCA.

15. The Department's investigation of Payton has determined that in the conduct of his affairs under his insurance producer's license, Payton is a source of injury and loss to the public because he provides investment advice without meeting the requirements of Montana law to do so and by his using undue pressure in his sales tactics Payton has convinced persons to purchase insurance products they did not want or that were unsuitable.

In the event the foregoing ALLEGATIONS were proven at hearing, the Commissioner may reach the following:

CONCLUSIONS OF LAW

1. The Montana State Auditor is the Securities Commissioner. MCA § 30-10-107.
2. The administration of the Securities Act of Montana, MCA § 30-10-101 et seq., is under the supervision and control of the Securities Commissioner. MCA § 30-10-107.
3. The Securities Act of Montana shall be construed to protect investors, persons engaged in securities transactions, and the public interest. MCA § 30-10-102.
4. Pursuant to MCA § 30-10-103(11), an investment advisor counsels others for compensation, direct or indirect, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

5 Pursuant to MCA § 30-10-201(3), it is unlawful for a person to act as an investment advisor without first being registered as such with the Department.

6. By rendering advice regarding the value and sale of securities to persons in Montana for direct or indirect compensation, Payton acted as an unregistered investment advisor in violation of MCA § 30-10-201(3).

7. Pursuant to MCA § 30-10-103(20), a securities salesperson represents a broker-dealer in effecting or attempting to effect sales of securities.

8. Pursuant to MCA § 30-10-201(1), it is unlawful for a person to act as a securities salesperson without first being registered as such with the Department.

9. Additionally and alternatively, by representing a broker-dealer in effecting or attempting to effect the sales of securities by persons in Montana, Payton acted as an unregistered securities salesperson in violation of MCA § 30-10-201(1).

10. Additionally and alternatively, by recommending that persons sell securities without grounds to believe that the transaction or recommendation was suitable for those individuals based upon reasonable inquiry concerning those individuals' investment objectives, financial situation and needs, and any other relevant known information, Payton acted as an unethical securities salesperson in violation of § 30-10-201(13) (g), MCA, and ARM § 6.10.126(2).

11. Additionally and alternatively, by advising persons regarding the value of their securities and recommending sales of certain securities held by individuals he advised without grounds to believe that his advice or recommendation was suitable for those individuals based upon reasonable inquiry concerning those individuals' investment objectives, financial situation

and needs, and any other relevant known information, Payton acted as an unethical securities salesperson in violation of § 30-10-201(13) (g), MCA, and ARM § 6.10.127(2).

12. Additionally and alternatively, by recommending that persons sell securities without grounds to believe that the recommendation is suitable for that person based upon reasonable inquiry concerning that person's investment objectives, financial situation and needs, and any other relevant known information, Payton acted fraudulently, in violation of § 30-10-301, MCA.

13 Pursuant to § 30-10-305(3), MCA, the Commissioner may impose an administrative fine not to exceed \$5,000.00 per violation upon a person found to have engaged in any act or practice constituting a violation of parts 1 through 3 of the Securities Act of Montana or any of its regulation

14. The State Auditor is the Commissioner of Insurance pursuant to § 2-15-1903, MCA

15. The Montana Insurance Department is under the control and supervision of the Commissioner pursuant to §§ 2-15-1902 and 33-1-301, MCA.

16. The Commissioner shall administer the Department to protect consumers pursuant § 33-1-311, MCA.

17 A life insurer may also sell annuity contracts which are regulated by the Department, pursuant to §§ 33-2-109(4) and 33-20-101 et. seq., MCA.

18. An insurance producer license from the Department must be obtained prior to holding oneself out as an insurance producer or acting as an insurance producer, pursuant to § 33-17-201, MCA.

19. A licensed insurance producer may not represent an insurer unless that producer is an appointed producer of that insurer and such appointment is filed with the Department, pursuant to § 33-17-236, MCA.

20. Pursuant to §§ 33-2-109(4), 33-20-101 et. seq., and 33-17-236, MCA, as a licensed insurance producer appointed with AMERUS, Payton may sell fixed annuity contracts issued by AMERUS.

21. Pursuant to § 33-1-102, MCA a person may not transact a business of insurance in Montana or a business relative to a subject, resident, located, or to be performed in Montana without complying with the applicable provisions of this code

22. Payton is in violation of § 33-17-1001 (1) (c), MCA and ARM 6.6.805 (1), by failing to provide specific information relevant to the insurance product he was offering to the specific individuals in this case.

23 Payton is in violation of § 33-17-1001(1)(f), MCA in that, while in the conduct of the affairs under the insurance producer license, Payton used fraudulent, coercive, or dishonest practices or was otherwise incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public.

24. Payton is in violation of § 33-1-1302, MCA by fraudulently selling unsuitable insurance products to Montana citizens, acting with reckless disregard as to whether his assertions regarding the product were true.

25. Pursuant to § 33-17-1001(1), MCA, the Commissioner may suspend, revoke, refuse to renew, refuse to issue a license or may levy a civil penalty in accordance with MCA § 33-1-317 or choose any combination of actions when an insurance producer is found to be in violation of MCA § 33-17-1001.

26. Pursuant to MCA § 33-1-317, the Commissioner may impose an administrative fine not to exceed \$5,000.00 per violation of the Montana Insurance Code or regulations.

AGREEMENT

A. Without admitting the above findings of fact and conclusions of law, Payton hereby stipulates and consents to the following:

1. Payton's Montana license as an insurance producer shall be revoked for a period of five (5) years, beginning on the date this agreement is consummated. Payton will not apply for registration in Montana as either a securities salesperson or an investment advisor representative for a period of five years, beginning on the date this agreement is consummated.
2. Should Payton apply for and receive a new insurance producer's license in Montana, that license will be subject to the following conditions
 - a. Payton will provide a list of scheduled appointments, including group events, relevant to the sales of insurance in advance of those appointments for a period of one year;
 - b. Payton will provide proof he has successfully completed twenty-four (24) additional continuing education credits during the period before and up to his renewal date on the new license. Half of those credits will cover the issue of ethics and half of those credits will cover issues of appropriate sales tactics;
 - c. Payton will provide a monthly list of his clients to the State Auditor's Office for a period of one year.
3. Payton will pay a fine in the amount of \$10,000 to the State Auditor's Office. Half of the fine is allocated to the Insurance Department and half is allocated to the

Securities Department. The fine may be paid pro-rata over the five year revocation period.

B. The Commissioner agrees and stipulates to the following:

1. The Commissioner grants Payton the immunity provided in §33-1-316, MCA and §30-10-304(4), MCA with regard to the claims and allegations of this Agreement.
2. The Commissioner will not issue a press release regarding this Agreement.

C. The parties agree and stipulate as follows:

1. The Statute of Limitation is tolled for five (5) years from the date of consummation of this consent agreement with regard to the allegations set forth above. In the event Payton violates the terms of this consent agreement by conducting the business of insurance or acting as an investment advisor or securities salesperson at any time during the five year revocation period, or by failing to pay the fine set forth above within the five year revocation period, or violates the insurance or securities laws of any other state during the five year revocation period, Payton shall pay a fine to the State Auditor's Office in the amount of \$75,000.

Any complaints brought to the Commissioner after the signing of this Agreement that contain allegations of illegal acts by Payton of a similar or the same nature as the allegations set forth above that occurred prior to the consummation of this Agreement will not result in further administrative, civil or criminal action by the Commissioner

2. This Consent Agreement constitutes the entire agreement between the parties, there being no other promises or agreements, either express or implied. Pursuant to statutory authority, the Commissioner hereby agrees that the Commissioner will not initiate any civil or administrative action against Payton regarding the allegations

contained in the Amended Notice of Proposed Agency Action (hereafter "Action").
The Commissioner will not refer the allegations or evidence underlying the
allegations for criminal prosecution to any other agency. Payton fully and forever
releases and discharges the Office of the State Auditor, the elected State Auditor and
all State Auditor employees from any and all actions, claims, causes of action,
demands, or expenses for damages or injuries that may arise from the allegations
underlying this Agreement, whether asserted or unasserted, known or unknown,
foreseen or unforeseen, arising out of the Action

3. Upon signing this notarized consent agreement, the Commissioner will file with
the hearing examiner the Consent Agreement in regards to all matters now pending
before him and seek a dismissal of this case, with prejudice, and will vacate the Cease
and Desist Order issued in this matter.

DATED this 21st day of September 2004.

MONTANA SECURITIES DEPARTMENT

By: Karen Powell
Karen Powell
Deputy Securities Commissioner

SUBSCRIBED AND SWORN to before me this 21st day of
September 2004.

Michelle Mause
Notary Public for the State of Montana
Residing at Helena, Montana
My commission expires March 29, 2008

DATED this 20th day of September 2004.

MONTANA INSURANCE DEPARTMENT

By: Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

SUBSCRIBED AND SWORN to before me this 20 day of
SEPTEMBER 2004.

Paula Shutter
Notary Public for the State of Montana
Residing at HELENA
My commission expires 4/14/06

DATED this 20 day of Sept. 2004.

MARK PAYTON

Mark Payton

SUBSCRIBED AND SWORN to before me this 20 day of
September 2004.

Jacqueline T. Lenmark
Notary Public for the State of Montana
Residing at Helena, Montana
My commission expires 10-4-2006

JACQUELINE T. LENMARK
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